

# CASE UPDATES

**Daniel Neill and Kriti Upadhyay**  
**Guildhall Chambers**

# Guess the case...



# Guess the case...



*Reaney v (1) University Hospital of North  
Staffordshire NHS Trust (2) Mid Staffordshire  
NHS Foundation Trust [2015] EWCA Civ 1119*

# *Reaney: Care Needs*

C aged 61 contracted transverse myelitis

Modest care needs, largely independent

Complications in hospital

Increased care needs

# *Reaney: Care Needs*

Ds admitted negligence

Judge held Ds liable for all care needs

Ds appealed, contending liable only for those needs less needs she would have had in any event

# *Reaney: Care Needs*

- CA held Ds only liable for increased needs
- Where needs ‘substantially of the same kind’ as pre-existing needs then only additional needs recoverable
- Where needs ‘qualitatively different’ from pre-existing needs, all those needs recoverable

# *Reaney: Care Needs*

- C's care needs not qualitatively different
- Judge's decision that Ds liable for all care needs could not stand
- CA allowed appeal

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*Sellar-Elliott v Howling* [2016] EWHC 443 (QB)

# *Sellar-Elliott*: Interim Payments

Failure to spot malignant tumour

D admitted breach...

...but denied causation

Causation a matter of expert evidence

# *Sellar-Elliott*: Interim Payments

- C applied for interim payment
- Application heard 6 weeks before exchange of expert evidence
- C served expert evidence before hearing
- D did not

# *Sellar-Elliott*: Interim Payments

Interim payment test – CPR 25.7(1)(c)

Master decided application on evidence before him

C awarded interim payment 100k

D appealed

# *Sellar-Elliott*: Interim Payments

How to deal with interim payment application in clinical negligence claim where positive causation defence pleaded but expert evidence not to be exchanged until after hearing?

D argued if Master's followed Cs would have weapon to force early exchange of expert evidence

C argued Master entitled to adopt approach

# *Sellar-Elliott*: Interim Payments

No obligation on parties to file supporting evidence under CPR 25

Courts would be alert to improper use of applications

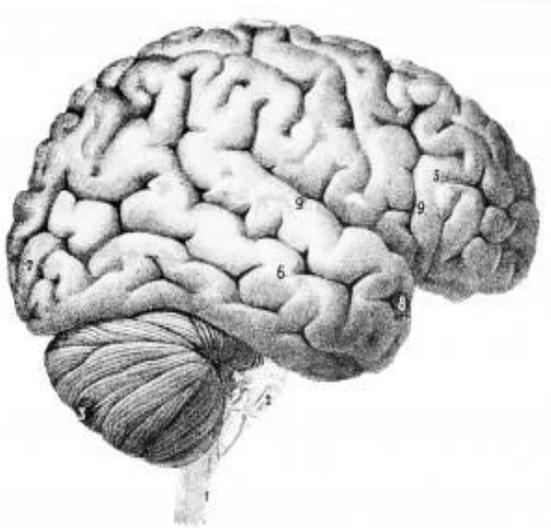
Nothing wrong with Master's approach

Appeal dismissed

Guess the case...



# Guess the case...



*Clark v Braintree Clinical Services Ltd* [2015]  
EWHC 3181 (QB)

# *Clark: Admissions*

- C had arthroscopic shoulder surgery
- Clinician directed physiotherapy ASAP
- 1 month delay, by which time shoulder stiff and painful
- C left with poor result

# Clark: Admissions

D served Defence stating breach admitted 'if the facts alleged [...] are correct' and 'unless the records reveal some good reason' why physiotherapy not offered

D subsequently sought to rely on second report from its expert denying breach

Court to determine:

- (i) D application to withdraw its admission
- (ii) C application to debar D from relying on report

# *Clark*: Admissions

Re. (i):

Pleading constituted admission

So D required permission to withdraw it

Relevant factors incl. conduct, promptness,  
prejudice, etc.

Judge refused D permission

# *Clark*: Admissions

Re. (ii):

Inconsistent to refuse permission but to allow D to rely on report

Other factors incl. late service of report and lack of explanation

Also report inconsistent with previous one

Judge granted C debaring order

*Knauer (Widower and Administrator of the  
Estate of Sally Ann Knauer) v Ministry of Justice*  
[2016] UKSC 9

# Supreme Court decision

- Mesothelioma case under the Fatal Accidents Act 1976: C's wife had died aged 46 following asbestos exposure in the course of her employment; D admitted liability.
- Issue: whether the multiplier for calculating damages should be calculated from the date of death rather than the date of trial
- Held: calculating damages for loss of dependency upon the Deceased from the date of death rather than date of trial under-compensated the claimant in most cases as the claimant suffered a discount for early receipt when the money would not in fact be received until after the trial
- The correct date at which to assess the multiplier for future losses under the Act should therefore be the date of trial, not the date of death.

# Guess the case...



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*Robert Synclair v East Lancashire Hospitals  
NHS Trust [2015] EWCA Civ 1283*

# Facts

- C had during Mr Z's ward round stated that C was 'well', and the stoma was suffered from rectal cancer, leading to stoma and colostomy bag
- C attended D's hospital with a history of abdominal pain and non-functioning stoma: diagnosis of parastomal hernia with sub-acute obstruction
- Laparoscopic repair carried out by a consultant general surgeon, Mr S, assisted by a surgical registrar, Mr Z: C alleged negligent repair
- Appeal: an attendance note made by a more junior doctor (Dr D) two days after the procedure s 'normal colour'; C was then discharged. The stoma subsequently became necrotic and perforated.

# Appeal and decision

- C disputed this in evidence: he said that at the time of the ward round he had been feeling sick, in pain, and the stoma was darker in colour
- C said that he told Mr Z that he was concerned about the colour, but was advised not to worry
- Dr D was not called to give evidence by the trust. The trial judge accepted that the account of C and his wife was more persuasive than the written record of Mr Z's attendance by Dr D, which he found to be inaccurate. C's discharge amounted to a breach of duty.
- On appeal the Court of Appeal agreed: simply because a document was apparently contemporary did not absolve the court of deciding whether it was reliable and what weight to give it.

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# *Watson v Ministry of Defence (2016)*

# Application

- C, an employee of D, brought a clinical negligence claim against it in respect of a deterioration in her hip
- C claimed that D's failure to act promptly on a hip image sent to it in 2005, and a subsequent delayed diagnosis until 2010, left her unable to work, permanently crippled and in severe pain. She was discharged from the army in 2012.
- A trial was scheduled to take place in May 2016
- D's expert saw a video of C, and concluded that C's apparent inability to bend over and pick things up was either due to fear or conscious exaggeration

# Application

- D carried out surveillance evidence which showed C picking things up from the floor
- The surveillance evidence was received and disclosed to C in March 2016
- C submitted that D should have obtained surveillance evidence in November 2015 following disclosure of C's expert report
- Judge Yelton held: D's surveillance did not amount to an ambush, even though late in the day. It was in the interests of justice to admit the evidence.
- The trial date was not adjourned.

# Guess the case...



*Lopes de Sousa Fernandes v Portugal* (App.  
No. 56080/13): European Court of Human  
Rights

# Facts

- Deceased underwent nasal polypectomy on 26.11.97, discharged home on the same day
- Severe headaches at 1.30 am on 27.11.97; diagnosed with psychological disorder and prescribed tranquilisers
- Later the same morning diagnosed with bacterial meningitis; transferred to intensive care
- Discharged from hospital on 13.12.97 apparently stable
- Pain persisted : two further hospital admissions in December 1997 and January 1998

# Facts

- Then: admission to a different hospital on 17.2.1998, suffering from chronic diarrhoea with microcytic anaemia
- Different hypotheses by the treating clinicians, but his condition deteriorated
- He died at that hospital on 8<sup>th</sup> March 1998 from the consequences of septicaemia caused by peritonitis and hollow viscera perforation.

# Violation of Article 2

The Applicant (Deceased's wife) alleged breach of Article 2 by the Defendant state of Portugal, on the basis that:

- The Deceased had lost his life due to hospital acquired meningitis;
- Inadequate medication at the early stage of admission;
- Delay in identifying and treating the perforation of his duodenal ulcer
- Also violations of the procedural limb of Article 2

# Judgment: breach of Art 2

- The meningitis could have been diagnosed earlier;
- The lack of co-ordination of the ENT department and the Emergency department revealed a deficiency in the public hospital service;
- Therefore deprivation of appropriate emergency care and a violation of the right to life under the substantive limb of Article 2
- There was also a breach of the procedural limb of Article 2 because:
  - Delay in A being able to bring criminal or civil proceedings
    - No adequate explanation of cause of death given to A

# Judgment: other observations

## Informed consent:

- States are required to take the necessary measures so that doctors considered the foreseeable consequences of medical intervention for the physical integrity of patients;
- Patients are entitled to be informed in advance and in clear terms of such risks;
- The relevant State authority is capable of being responsible for the failure to impart this information and ensure fully informed consent.

Joint dissenting opinion: Judges Sajo and Tsotsoria

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*(1) Connor Smith (By his Mother and Litigation Friend Nicola Smith) (2) Nicola Claire Louise Smith (Suing as Personal Representative of the Estate of Callum Smith, Deceased) v University of Leicester NHS Trust [2016] EWHC 817 (QB)*

# Facts

- Neil Caven (NC) suffered from a complex genetic disease, Adrenomyeloneuropathy (AMN).
- Brothers Connor Smith and Callum Smith (Deceased) were second cousins of NC, both suffered from versions of AMN, diagnosed in 2006. Callum's death was due to a cardio-respiratory arrest arising from the disease.
- Although NC was first seen by a neurologist in 2003 and AMN considered, appropriate testing was not carried out until 2006, after Callum's diagnosis in March 2006.

# Decision on D's strike out application

- The Claimants alleged that NC's disease should have been diagnosed earlier by the Defendant trust, and that this would have led to an earlier diagnosis for NC, wider family testing, and thus a better outcome for Connor and Callum.
- The claim was struck out on the basis that it would not be fair just and reasonable on policy grounds to impose a duty of care on the Defendant in respect of those who are not its patients.